

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
08-CR-004S

MONTE MONTALVO,

Defendant.

1. Defendant is charged in an indictment, dated January 16, 2008, with possession of a firearm while subject to an order of protection, in violation of Title 18, United States Code, Sections 922(g)(8) and 924(a)(2). (Docket No. 1).

2. On March 13, 2008, this case was referred to the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, for all pre-trial matters. (Docket No. 11). On April 15, 2008, Defendant moved to dismiss the indictment, alleging that the government tampered with evidence submitted to the grand jury. (Docket No. 18 ¶ 43). Defendant also moved to suppress a firearm and ammunition obtained pursuant to a search warrant, alleging the application for the search warrant failed to establish probable cause. (Docket No. 18 ¶ 34). Lastly, Defendant moved to compel discovery, of among others, an unredacted search warrant affidavit and sought leave to file additional motions. (Docket No. 18 ¶¶ 2-24).

3. On June 18, 2008, Judge McCarthy filed an Amended Report & Recommendation and Order recommending that Defendant's motion to dismiss the indictment and suppress the evidence be denied and denying Defendant's motion for disclosure of the unredacted search warrant affidavit. (Docket No. 38).¹

¹ Judge McCarthy filed an Amended Report & Recommendation and Order on June 18, 2008. (Docket No. 38). The sole purpose of this Amended Report & Recommendation and Order was, as Judge McCarthy stated, "to correct my erroneous citations to Fed R. Civ. P. 72 and Local Rule of Civil Procedure

4. On September 19, 2008, Defendant filed his objections to Judge McCarthy's Amended Report & Recommendation and Order. (Docket No. 47).

5. This Court has thoroughly reviewed *de novo* Judge McCarthy's Amended Report and Recommendation, the Defendant's Objections thereto, and the applicable law. Upon due consideration, this Court finds no legal or factual error in Judge McCarthy's Amended Report and Recommendation. Accordingly, Defendant's Objections are denied and this Court will accept Judge McCarthy's Amended Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge McCarthy's Amended Report and Recommendation and Order (Docket No. 38) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Defendant's Objections to the Amended Report & Recommendation and Order (Docket No. 47) are DENIED.

FURTHER, that Defendant's omnibus motion seeking dismissal of the indictment and suppression of the evidence (Docket No. 19) is DENIED.

SO ORDERED.

Dated: March 6, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

72.3(a)(3) concerning the deadlines for filing objections (Dkt. #37, pp. 15-16)."